

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	LaRosa	Art Unit :	1644
Patent No.:	7,566,539	Examiner :	Chun Dahle
Serial No. :	10/656,805	Conf. No. :	8777
Filed :	September 5, 2003		
Title :	ANTI-CCR2 ANTIBODIES AND METHODS OF USE THEREFOR		

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being electronically filed in accordance with §1.6(a)(4) on the 8th day of March, 2010.

/Laurie Butler Lawrence/
Laurie Butler Lawrence, Reg. No. 46,593

Office of Petitions
Commissioner for Patents

PETITION UNDER 37 CFR §1.183

In view of the recent Federal Circuit decision in *Wyeth and Elan Pharma v. Kappos* (as U.S. Patent & Trademark Office Director) (Fed. Cir. 2010) (decided January 7, 2010), Applicants hereby petition the Commissioner under 37 CFR §1.183 to waive or suspend the time limitations set forth in 37 CFR 1.705(d), as necessary, in the interests of justice and equity, to allow Applicants to request reconsideration of the patent term adjustment calculation.

Applicants may be seriously prejudiced because the Applicants would be deprived of additional patent term without this relief, and no party or interest will be unfairly prejudiced if the relief is granted.

Summary

On January 7, 2010, the Federal Circuit upheld the decision of the District Court of the District of Columbia in *Wyeth et al. v. Dudas*, 580 F.Supp.2d 138 (D.D.C. 2008) that the United States Patent & Trademark Office had misinterpreted the calculation of patent term adjustment under 35 USC 154(b)(2)(A). At this time, the United States

Patent & Trademark Office indicated that it would not appeal the decision of the Federal Circuit and implemented new provisions for calculating patent term adjustment. Applicants have attached herewith a copy of a request for recalculation of patent term adjustment which shows that under the proper interpretation of 35 USC 154(b)(2)(A), Applicants are entitled to an additional 432 days of patent term adjustment.

In light of the Federal Circuit's decision in *Wyeth and Elan Pharma v. Kappos* (as U.S. Patent & Trademark Office Director) (Fed. Cir. 2010) (decided January 7, 2010) and the announcement from the United States Patent & Trademark Office that it would not appeal the Federal Circuit decision, Applicants now earnestly petition the Commissioner under the authority granted him under 37 CFR §1.183 to waive or suspend the time limitations set forth in 37 CFR 1.705(d), as necessary, in the interests of justice and equity, to allow Applicants request for recalculation of patent term adjustment to be considered. Prior to the law regarding the calculation of patent term adjustment to be finally decided upon, it was unclear what patent term adjustment a patent was entitled. Applicants have filed this petition within two months¹ for the decision by the Federal Circuit which finally set forth how patent term adjustment should be calculated.

Filed herewith is a check for \$130 in payment of the petition fee set forth in §1.17(h). Please apply any charges or credits to our Deposit Account No. 50-2762.

Respectfully submitted,
LaRosa et al., Applicants

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¹ The Federal Circuit decision in *Wyeth and Elan Pharma v. Kappos* was issued on January 7, 2010. Two months from January 7, 2010 was March 7, 2010 which was a Sunday.